

3 Phil. 705

[G.R. No. 1412. April 15, 1904]

**THE UNITED STATES, COMPLAINANT AND APPELLANT, VS. J.C. WINEBRENNER,
DEFENDANT AND APPELLEE.**

D E C I S I O N

ARELLANO, C.J.:

The wife of the accused considered herself to be offended by the alleged action of Andres Rivera in seizing the hand of one of her sisters in a private part of the house. This appears to have taken place one Thursday night, and it was not until the afternoon of the following Saturday that the occurrence which gave rise to this cause took place. The defendant's wife describes the occurrence, saying that on that afternoon upon turning a corner she saw Andres Rivera; her husband called him and asked him what he had done in his house on Thursday night, to which Rivera replied that he had not been in their house, and that the woman must have been mistaken if she said so. "When he gave this answer," she continues, "my husband struck him. Upon receiving the blow Andres picked up a *matabia* and attacked my husband. Then my husband pulled out a sword cane and attacked him, and a general fight followed." (Record, p. 37.)

The accused says: "On the 16th of May in the afternoon I saw Andres Rivera go into a little house in an alleyway. *I got my stick from my house and went* toward the house which Andres had entered. I called him and asked him what he was doing in the water-closet of my house Thursday night, and said to him 'what did you want with that girl, Maxima, whom you seized by the arm?' Andres replied that he was not there, and that I was a liar." The witness says that this was followed by an insulting word and that thereupon the accused struck

Andres in the face with his fist, whereupon the latter drew a knife from his pocket and stabbed the accused in the arm, whereupon the accused attacked him with the sword cane, striking him in the face, that the blade of the weapon doubled up, and that the accused threw it away, and a hand-to-hand fight followed.

The result of the struggle was that Rivera was wounded, the doctor's certificate showing seven wounds, which were cured in twenty-two days. Of these seven wounds only four, according to Rivera's statements, were caused by the accused, the others being accidental.

Upon these facts which show the circumstances surrounding the beginning of the fight, the question arises as to whether the accused is exempt from liability. The court below in his decision sustains the affirmative, while the Attorney-General in his brief sustains the negative. The judge, in reaching that conclusion, considered the concurrence of two of the requisites of this circumstance of exemption, to wit, an illegal aggression on the part of Rivera and a reasonable necessity on the part of the accused to make use of the arm employed in repelling the attack, but does not express his opinion as to the other necessary requisite—that is, the lack of sufficient provocation on the part of the accused.

It can not be maintained that there was not sufficient provocation on the part of the accused, who approached his adversary in a hostile attitude, having first gone to his house to get a sword stick, and having commenced, according to the statement of his own wife, by striking Rivera as soon as the latter denied having been in his house on the night referred to.

It follows, therefore, that it was the accused who provoked the quarrel, that he was the first to attack, and that the aggression was illegal, both by reason of the absence of any motive at the time, or any sufficient reason arising from any former occurrence known to us, and even had the latter existed it could not be considered as a grave offense which was the object of approximate vindication, a circumstance

which at all events is only mitigating and presupposes the existence of guilt and the liability to punishment. Consequently it appears that the accused did not defend himself but was the offender. We can not consider in his favor the exemption from responsibility or any mitigating circumstance, not even that of having acted upon a stimulus sufficiently powerful to have naturally produced obfuscation.

Therefore, in accordance with the provisions of article 418 of the Penal Code, we condemn J.C. Winebrenner to two months and one day of *arresto mayor*, to pay the doctor's bill, and the costs of the prosecution.

Torres, Mapa, McDonough, and Johnson, JJ., concur.

Cooper, J., did not sit in this case.
